THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.17961 OF 1998

20.03.2007

Rajoori Shekaraiah

….Petitioner

Vs.

Commissioner, Siricilla Municipality,
Siricilla, Karimnagar District.

….Respondent

THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.17961 of 1998

ORDER:

In this petition, the petitioner has questioned the notice issued under section 360 of the A.P. Municipalities Act confirming the earlier notice dated 11.6.1998 issued under section 228(3) of the Act.

The petitioner is the owner of a residential site admeasuring 249.3/4 sq. yards situated at Shiva Nagar, Siricilla Mandal, Karimnagar District. He obtained sanctioned plan for construction of a residential building vide proceedings bearing Roc.No.G1/2232/97, dated 14.5.1998. It is the case of the petitioner that his neighbour by name Gopal, having interest in the property demanded him to sell the same. But, as the petitioner did not oblige the same, at his behest, though the petitioner is making construction in accordance with the sanctioned plan, the respondents have issued a notice for demolition contrary to the provisions of the A.P. Municipalities Act.

Mainly, the impugned notice is questioned on the ground that it was not preceded by any show cause notice and that the earlier notice dated 11.6.1998 issued under section 228(3) of the Act was also served along with the impugned notice dated 19.6.1998.

Perusal of the impugned notice indicates that the said notice was issued for removal of certain structures on the ground that the petitioner has undertaken constructions contrary to the sanctioned plan. As required under Section 228 of the A.P. Municipalities Act, if the Commissioner is satisfied that the construction or reconstruction of any building is being carried on, or has completed, otherwise than in accordance with the plans or particulars on which such permission or order was based, he has to make a provisional order requiring the

owner or the builder to demolish the work done or to make such alternations in conformity with the provisions of the Act or bye-laws. The provisional order shall be served together with a notice on the owner of the building requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

Though it is a case of the petitioner that the impugned notice served along with the earlier notice, was not preceded by any show cause notice, but, it is merely stated that the notice impugned was served along with the earlier notice dated 11.6.1998 and show cause notice, on 19.6.1998. Mere issuance of a notice under Section 228(3) of the Act is not sufficient in the absence of a show cause notice as required under the Act.

Though it is stated in the counter affidavit that the notice dated 11.6.1998 was served earlier, from a reading of the very impugned notice itself, it is clear that the provisional notice dated 11.6.1998 itself was enclosed to it. In that view of the matter, the impugned notice is contrary to the plain language enunciated under Section 228(3) of the Act.

Further, though it is stated that the petitioner has deviated from the sanctioned plan, but there is no indication of any such deviations in detail either in the earlier notice dated 11.6.1998 or in the impugned notice dated 19.6.1998. The said notices were issued without application of any mind and without furnishing the particulars as to the deviations specifically. It is to be noted that the petitioner obtained a duly sanctioned plan. In case the constructions are alleged to have been made in deviation of the sanctioned plan, it is an obligatory on the part of the respondents to notify such deviations so as to give an opportunity to the owner to rectify the same and to bring the construction in conformity with the sanctioned plan as required under section 228 of the A.P. Municipalities Act.

In that view of the matter, mere issuance of notices in a

cyclostyle manner without indicating the particulars as to the deviations, runs contrary to the very provisions of the Act and on the said ground alone, the impugned notice is fit to be set aside.

Accordingly, Writ Petition is allowed setting aside the notice, dated 19.6.1998 in UCR No.6/1/1998, on the file of the respondent-Commissioner. No order as to costs.

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Justice R. Subhash Reddy

Dated: 20.3.2007
Nn.

THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

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